



National Aeronautics and  
Space Administration  
Washington, DC 20546

# Procurement Notice

**PN 97-82**  
**March 12, 2003**

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## **TRADE AGREEMENTS ACT—EXCEPTION FOR U. S.-MADE END PRODUCTS**

**BACKGROUND:** This PN revises the NASA FAR Supplement to implement the determination of the Assistant Administrator for Procurement that, for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act for U.S.-made end products that are substantially transformed in the United States.

**ACQUISITIONS AFFECTED BY CHANGES:** All procurements subject to the Trade Agreements Act.

**ACTION REQUIRED BY CONTRACTING OFFICERS:** Comply with existing procedures at FAR 25.1101(c)(1).

**CLAUSE CHANGES:** This PN makes no changes to clauses or provisions.

**PARTS AFFECTED:** Changes are made in Part 1825.

**REPLACEMENT PAGES:** You may use the enclosed pages to Part 1825.

**TYPE OF RULE AND PUBLICATION DATE:** The PN was published as a final rule in the Federal Register (68 FR 11747 - 11748) on March 12, 2003.

**HEADQUARTERS CONTACT:** Patrick Flynn, Code HK, (202) 358-0460, email: Patrick.Flynn@nasa.gov.

R. Scott Thompson  
Director, Contract Management Division

Enclosures

**DISTRIBUTION:**  
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**PART 1825  
FOREIGN ACQUISITION**

**1825.003 Definitions.**

**1825.003-70 NASA definitions.**

"Canadian end product", for an item with an estimated value of \$25,000 or less, means an unmanufactured end product mined or produced in Canada or an end product manufactured in

Canada, if the cost of its components mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product. For an end product with an estimated value in excess of \$25,000, the definition at FAR 25.401 applies.

### **Subpart 1825.1--Buy American Act--Supplies**

#### **1825.103 Exceptions.**

(a)(i) The procurement officer shall send proposed public interest determinations to the Assistant Administrator for Procurement (Code HS) for approval.

(ii) The Assistant Administrator for Procurement has determined that it is inconsistent with the public interest to apply restrictions of the Buy American Act to Canadian end products with estimated values of \$25,000 or less as defined in 1825.003-70. Accordingly, contracting officers must evaluate all offers for such Canadian end products on a parity with offers for domestic end products, except that applicable duty (whether or not a duty free entry certificate may be issued) must be included in evaluating offers for Canadian end products.

(iii) The Assistant Administrator for Procurement has determined that for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States.

### **Subpart 1825.4--Trade Agreements**

#### **1825.400 Scope of subpart.**

(b) The Buy American Act applies to all acquisitions of Japanese end products or services in excess of \$2,500.

### **Subpart 1825.9--Customs and Duties**

#### **1825.901 Policy.**

NASA has statutory authority to exempt certain articles from import duties, including articles that will be launched into space, spare parts for such articles, ground support equipment, and unique equipment used in connection with an international program or launch service agreement. This authority is fully described in 14 CFR 1217.

#### **1825.903 Exempted supplies.**

(a) Through delegation from the Assistant Administrator for Procurement, Procurement Officers are authorized to certify duty free entry for articles imported into the United States, if those articles are procured by NASA or by other U.S. Government agencies, or by U.S. Government contractors or subcontractors when title to the articles is or will be vested in the U.S. Government in accordance with the terms of the contract or subcontract. Procurement officers shall complete the certification set forth in 14 CFR 1217.104(a) or 1217.104(c)

(<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html> - page1). Upon arrival of foreign supplies at a port of entry, the consignee, generally the commercial carrier or its agent (import broker), will file Customs Form 7501, Entry Summary. This form is available from Service Ports

(<http://www.customs.ustreas.gov/location/ports/index.htm>) or from NASA Headquarters' forms library ([https://extranet.hq.nasa.gov/nef/user/form\\_search.cfm](https://extranet.hq.nasa.gov/nef/user/form_search.cfm)). All duty-free certificates must be coordinated with the center Chief Counsel. Procurement officers must maintain a record of each certification and make this record available for periodic review by NASA Headquarters and the U.S. Customs Service.

### **Subpart 1825.10--Additional Foreign Acquisition Regulations**

#### **1825.1001 Waiver of right to examination of records.**

(b) The Administrator is the approval authority for waivers. The contracting officer must submit the waiver request, consisting of the determination and findings prescribed in FAR 25.1001(b) and any relevant supporting information, to the Headquarters Office of Procurement (Code HS).

#### **1825.1002 Use of foreign currency.**

The NASA Headquarters Comptroller (Code B) is the designated official for making the determination of the feasibility of using excess or near-excess currency.

### **Subpart 1825.11--Solicitation Provisions and Contract Clause**

#### **1825.1101 Acquisition of supplies.**

(c)(1) NASA has determined that the restrictions of the Buy American Act are not applicable to U.S.-made end products.

(e) The contracting officer must add paragraph (k) as set forth in 1852.225-8, Duty-Free Entry of Space Articles, in solicitations and contracts when the supplies that will be accorded duty-free entry are identifiable before award. Insert the supplies determined in accordance with FAR Subpart 25.9 and 1825.903.

#### **1825.1103 Other provisions and clauses.**

##### **1825.1103-70 Export control.**

(a) Background. (1) NASA contractors and subcontractors are subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799. The contractor is responsible for obtaining the appropriate licenses or other approvals from the Department of State or the Department of Commerce when it exports hardware, technical data, or software, or provides technical assistance to a foreign destination or "foreign person", as defined in 22 CFR 120.16, and there are no applicable or available exemptions/exceptions to the ITAR/ EAR, respectively. A person who is lawfully admitted for permanent residence in the United States is not a "foreign person". (See 22 CFR 120.16 and 15 CFR 734.2(b)(2)(ii).)

(2) The exemption at 22 CFR 125.4(b)(3) of the ITAR provides that a contractor may export technical data without a license if the contract between the agency and the exporter provides for the export of the data. The clause at 1852.225-70, Alternate I, provides contractual authority for the exemption, but the exemption is available only after the contracting officer, or designated representative, provides written authorization or direction enabling its use. It is NASA policy that

the exemption at 22 CFR 125.4(b)(3) may only be used when technical data (including software) is exchanged with a NASA foreign partner pursuant to the terms of an international agreement in furtherance of an international collaborative effort. The contracting officer must obtain the approval of the Center Export Administrator before granting the contractor the authority to use this exemption.

(b) Contract clause. Insert the clause at 1852.225-70, Export Licenses, in all solicitations and contracts, except in contracts with foreign entities. Insert the clause with its Alternate I when the NASA project office indicates that technical data (including software) is to be exchanged by the contractor with a NASA foreign partner pursuant to an international agreement.

### **Subpart 1825.70--Foreign Contract and International Agreement Clearances**

#### **1825.7000 Scope of subpart.**

This subpart prescribes policy and procedures for pre-award clearance of foreign contracts, and for coordination of international agreements that contemplate award of contracts using appropriated funds.

#### **1825.7001 Definition.**

"**Foreign contract acquisition**", as used in this subpart, means the acquisition by negotiation of supplies or services, including construction work and research and development when the work is to be performed outside the United States, its possessions, and Puerto Rico by a foreign government or instrumentality thereof or by a foreign private contractor. The term does not include --

- (a) Negotiation of contracts with domestic concerns involving work to be performed outside the United States, its possessions, and Puerto Rico; or
- (b) Contracts with the Canadian Commercial Corporation.

#### **1825.7002 Foreign Contracts.**

(a) Policy. Following the procedure in paragraph (b) of this section, the Acquisition Team must coordinate with Headquarters before initiating any foreign contract acquisition if the acquisition is valued above \$100,000 or involves export control issues. An acquisition involves export control issues if it entails --

(1) Importing or exporting goods or technical data from or to a country listed in 22 CFR 126.1(a) or (d) (Subchapter M, the International Traffic in Arms Regulations) (<http://www.pmdtc.org/reference.htm#ITAR>);

(2) Importing or exporting Defense Articles or Defense Services on the United States Munitions List at 22 CFR Part 121 which would require NASA to obtain a license from the State Department's Office of Defense Trade Controls;

(3) Exporting goods or technical data on the Commerce Control List at 15 CFR Part 744 and that require NASA to obtain either a Special or an Individual Validated License;

(4) Importing and/or exporting goods or technical data from or to an entity listed in 15 CFR Part 740, Supplements 1, Country Group D; or

(5) Exporting and/or importing of goods, technology, or services to or from any entity subject to transaction control, embargo, or sanctions pursuant to 31 CFR Chapter V.

(b) Procedure.

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(1) The Headquarters or field installation technical office requiring a foreign contract acquisition meeting any of the criteria listed in paragraph (a) of this section must submit the

following information to the Headquarters Office of External Relations (Code I) through the contracting officer and the Headquarters Office of Procurement (Code HS) --

(i) The name of the foreign entity, the country or countries involved, and the purpose of the contract;

(ii) The Space Act agreement(s) involved (pursuant to NMI 1050.9), if any;

(iii) A description of the goods or technical data requiring prior written approval or the issuance of the license for their import or export from the Departments of Commerce, State, or Treasury; and

(iv) The reason why the acquisition is being placed with a foreign entity.

(2) All coordination required between NASA and the Departments of Commerce, State, and Treasury regarding foreign contract acquisitions shall be accomplished through the Headquarters Office of External Relations (Code I).

(3) The lead-time for obtaining an export license is 60 to 90 days. Requests for Headquarters clearance should be initiated as early as possible.

### **1825.7003 International Agreements.**

Office of Procurement (Code HS) concurrence is required for all Memoranda of Understanding with foreign entities and for other types of international agreements which contemplate the procurement of goods or services using U.S. appropriated funds. No Code H concurrence is required for agreements which are done solely on a cooperative basis.

